Sects. II-27—100,006—21-5-52.

# (1952) Department

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**SERIES.**

**G.O. No.** 3057

**Dated** 17-7-1952

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**[Despatch Abstract.]**

Electricity Dept — Contracts

Departure from General Conditions of Contract

Orders Issued

GOVERNMENT OF MADRAS
ABSTRACT
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Electricity Department - Contracts - Departures from "General Conditions of Contract" - Orders issued.
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necessary, the Accountant General suggested that the question should be examined as a general one and definite orders issued. The Chief Engineer (Electricity), however, stated that the firm in question was one of international repute with whom the Electricity department had had extensive dealings for over 20 years and that the firm was not likely to deny the obligations of making good, free of cost, all defects in materials or workmanship discovered within a reasonable period, especially when they had agreed in the past to make good such defects. As the Electricity Department generally deals with firms of international repute, the remarks of the Chief Engineer (Electricity) will apply to all such contracts. In the circumstances, no action is considered necessary on the Accountant General's suggestion.

Item (b) in paragraph 1: - In paragraph 3 of G.O. No.1983, Public Works, dated 2.5.1948 powers were delegated to the Chief Engineer (Electricity) for accepting, in the case of local purchase orders, deviations from the usual terms of payment considered inevitable or necessary in the interest of getting the orders for essential equipment executed in proper time and after such negotiation as may be found necessary with the companies concerned. The delegation was extended till 2.6.50 in G.O.No.2715, Public Works, dated 18.7.50 and further extended till 2.6.52 in G.O.No.3927, Public Works, dated 25.9.51. The Accountant General stated that the delegation appeared too general and that a monetary limit might be fixed on the powers of the Chief Engineer (Electricity) to accept deviation from the usual terms of payment. The Chief Engineer (Electricity) stated that the delegation given to him in respect of acceptance of the terms of contract was only to relax the normal terms of payment where necessary and justified under the existing conditions of uncertain and widely fluctuating market conditions prevalent throughout the world. In view of the difficulty in getting materials due to the international situation, no change is necessary in this regard at present. However, the position will be reviewed along with the question of continuing the delegation beyond 2.6.52, and orders issued separately.

Item (c) in paragraph 1: - The Accountant General suggested that the Chief Engineer (Electricity) might be asked to communicate monthly, both to the Government and to him, a statement of new local purchase orders in which special terms have been allowed with reasons therefor. The Chief Engineer (Electricity) has stated that such monthly statements would be arranged to be sent to the Government and the Accountant General after the Stores Accounting Division has been formed. As the Stores Accounting Division has been formed, the Chief Engineer (Electricity) is requested to send the statements in future.

Item (d) in paragraph 1: The Accountant General suggested that a suitable condition might be included in the contracts to the effect that the payments made would be "on account" payments, and that they should be refunded if the materials were found defective and were not replaced within a reasonable time. The Chief Engineer (Electricity) has pointed out that provision has already been made in the Local Purchase Order Conditions to safeguard the completion of contract in the event of defective material or workmanship.

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Item (e) in paragraph 1 :- The Accountant General stated that purchases could be made through the Director General, India Stores Department, who is more advantageously situated, as he can pool the orders of all State Governments and secure a reduction in price on larger orders. The Chief Engineer (Electricity) has remarked that ~~price on~~ the terms of payment quoted by the U.K. firms a e the "BEAMA"* terms whether quoted direct to the Department or through the Director General, India Stores Department, and that ~~the~~ no advantage is gained by awarding the contract through the Director General, India Stores Department, which procedure results in much correspondence and consequential delays. He has also pointed out that if the order is placed through the Director General, India Stores Department, an extra charge of 1% to 2% of the contract value has to be paid to him and that the services of the Central Organisation are however utilised by the Electricity Department whenever advantageous and necessary. In the circumst nces no change in the present procedure is necessary.

Item (f) in paragraph 1:- Prior to 1947, the terms of payment agreed to by the Contractors were generally in accordance with clause 25 of the "General Conditions of Contract." Since 1947, the position has changed and the terms of payment stipulated by the contractors involve advance payments generally on the lines indicated below:-

(1) Payment upto 30% of the F.O.B. or Contract value 3 months after placing the order.

(2) Payment upto 60% of the F.O.B. or Contract value after half the period quoted for delivery has elapsed.

(3) Payment upto 90% of the F.O.B. or Contract value on shipment, and so on.

As it usually takes time to arrive at an agreement satisfactory to both the parties, the Chief Engineer (Electricity) requests the sanction of Government to make advance payments on the strength of his acceptance letter issued to the contractor stipulating the main conditions of contract, schedule of materials, prices, terms of payment etc. and the contractor's acknowledgement for the same, and also to authorise the Accountant General to treat his acceptance letter and the company's acknowledgement as adequate for purpose of making advance payments. The Accountant General pointed out that the procedure under which advance payments are made prior to the final drawing up of the contract documents was objectionable as it was not in consonance with the provisions of Article 128 of M.F.C., Volume I, and that the Government might be forced at a later stage to accept whatever terms were stipulated by the firms. However, in view of the difficulties in getting materials at present and the need to avoid delay in procurement, the Government accept the Chief Engineer (Electricity)'s proposal and authorise him, for the period of two years, to make advance payments on the strength of his acceptance letter issued to the contractors stipulating the main conditions of contract, schedule of materials, prices, terms of payment etc. and the contractors acknowledgement of it. The Government also exempt the Electricity Department from the provisions of Article 128 of the M.F.C. Vol. I, regarding advance payments.

Item (g) in paragraph 1:- The Accountant General pointed out that in several contracts concluded in the Electricity-Department a price variation clause has been included

*'BEAMA'- British Electrical & Allied Manufacturing Assn.

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providing for the adjustment of originally accepted prices with reference to those ruling at the date of supply or manufacturing and that, as the acceptance of such clause has become a common feature in the Electricity Department, general orders may be issued prescribing in what cases such price variation clauses should be accepted and what procedure should be followed by the Department to check the variation in prices before the claims are admitted. He also pointed out that the procedure should inter alia provide for securing to the Government the benefit of a fall in price, that arrangements should be made with the Engineering or Commercial Agencies, or through the Government representatives in the countries concerned to get the variation in the rates of materials, labour etc. in order to check the claims of the contractors under the price variation clause and that, as the form of agreement appended to the departmental "General conditions of contract" for plant, machinery and manufactured equipment requires that the amount of the contract should be given as a specified amount, the form of agreement would have to be changed in consultation with the law officers of the Government. He had further stated that as the price variation clause would nullify in effect the whole principle of contract, it would be desirable that the payment of such enhanced rates demanded by suppliers should be approved by the Government so that it might be possible on each occasion to examine whether the price increases were really justified and payments thereof made in the public interest.

The Chief Engineer (Electricity) had remarked that the departmental conditions of contract did not impose any restriction in regard to the acceptance of any price variation clause, that no supplier was able to offer a firm price for any material that had to be manufactured and imported from overseas and that in the present unsettled world conditions with sudden and rapid fluctuations in the cost of raw materials and labour, freight insurance, exchange and customs rates etc., it could not be expected that contractors would quote a firm price for materials and equipment, the manufacture and supply of which took several months. In view of the difficulties which have been experienced for some years and which are bound to continue till conditions generally improve, the Chief Engineer (Electricity) said that it was inevitable that the variation in prices had to be accepted in each and every case not only for the actual cost of manufactured materials but for other incidental expenses such as freight, insurance, exchange, customs etc., which were dependent on the variation in the cost of material and fluctuation in their individual rates as well. He therefore suggested that the Government might delegate, for two years, full powers to himself, the C.O.Es. and the C.C.E(E) for acceptance of conditions for reasonable variations in final prices of equipment and supplies upto the time of delivery at sites in respect of tenders and quotation accepted by them without fixing any monetary limit, and for himself the additional powers in respect of erection contracts, where accepted costs or rates for erection were conditional on the fluctuation in the cost of labour.

After examining the proposals, the Government delegate the following powers to the Chief Engineer (Electricity), C.O.Es. and C.C.E.(E) for two years:-

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(a) Full powers to the Chief Engineer (Electricity), the C.O.Es. and the C.C.E.(E) to accept conditions for reasonable variation in final prices of equipment and supplies upto the time of delivery at sites in respect of tenders and quotation accepted by them.

(b) Full powers to the Chief Engineer (Electricity) in respect of erection contracts where accepted costs or rates for erection are conditional on the fluctuation in the cost of labour.

The delegation will also cover all current contracts or orders.

Whenever ~~Whenever~~ the final amounts to be paid in respect of items (a) and (b) above exceed the contract amount by more than 25%, the case should be submitted to the Government before final payment. The price variation should cover a fall in prices also.

As regards the Accountant General's suggestion for checking the variations in prices, the Chief Engineer (Electricity) stated that they could be adopted only when the price adjustments were based on any agreed formula depending on the variations in items succeptible ~~fo~~ of check with any published figures and that in respect of all contracts from U.K., the services of the Director General, India Stores Department would be utilised. He also said that the Accountant General's suggestion to utilise the Government's representatives in other countries would be borne in mind in future when contracts were placed on those countries.

3. The revised draft form of agreement appended to the "General conditions of contract" referred to by the Chief Engineer (Electricity) in his letter No. E3/A4/Misc/11652 G/50-3, dated 27.4.51 is awaited.

(BY ORDER ETC.,)

(Sd.) x x x
Secretary to Government.

To
The Chief Engineer (Electricity).
The Accountant General, through Finance.
Copy to Finance.

/True Copy/.

R. Narayanan 29.1.52
SUPERINTENDENT.
Madras Record Office, Madras.

Vn.25.10.